notice to the plaintiff of such absolute requirement, he had a right to assume that the defendant's ticket and telegraphing agent knew his duties and would perform them. If, therefore, as appears from the complaint, the plaintiff was induced to board the train and begin the journey disarmed of the written permit by the conduct of the defendant's agent and in reliancce upon his advice and his undertaking to give the permit to the conductor, the defendant could not rightfully eject him from the train for failure to exhibit a written permit to the conductor. The carrier cannot shield itself from the consequences of misconduct or mistake on the part of one of its agents, acting within the scope of his duties, which has naturally betrayed another of its agents into the final act of injury to the passenger.'

"A condition precedent to the enforcement of a regulation exacting extra charges in case of failure to purchase a ticket is that the carrier afford the passenger a reasonable opportunity to purchase a ticket; not so affording, such passenger is entitled to have transportation on payment (or tender for acceptance to the conductor in charge of the train) of the regular fare for his transportation. Kennedy *v.* B. R., L. & P. Co.,138 Ala. 225, 230, 35 South. 108; Evans *v.* M. & C. R. R. Co., 56 Ala. 246, 28 Am. Rep. 771; Kozminsky *v.* Oregon S. L. R. R. Co., 36 Utah, 454, 104 Pac. 570, 24 L. R. A. (N. S,) notes 758-761."

Injunction—Nuisance Caused by Smoke.—In Holman *v.* Athens Empire Laundry Co., 100 S. E. 207, the Supreme Court of Georgia held that when an injunction was asked to restrain defendant from using "such coal as throws out a black, dense smoke," and the evidence justified a finding that the use of coke, instead of soft coal, was more convenient and practical, injunctive relief should be granted.

The court said: "Smoke is not per se a nuisance (St. Paul *v.* Gilfillan, 36 Minn. 298, 31 N. W. 49). To constitute smoke a nuisance, according to the authorities, it must be such as to produce a visible, tangible and appreciable injury to property, or such as to render it specially uncomfortable or inconvenient, or to materially interfere with the ordinary comfort of human existence. That the business itself is offensive to others, or that property in the neighborhood of such business is necessarily adversely affected thereby, or that persons of fastidious taste would prefer its removal is not sufficient.

"Applying the foregoing principles to the case in hand, the defendant may make use of its property and carry on any business not per se a nuisance that produces no unnecessary, unreasonable, unusual or extraordinary impregnation of the air with smoke or soot,

to the sensible inconvenience and discomfort of plaintiff's tenants, or to the actual tangible and substantial injury of plaintiff's reality. * * * Is there, in case of nuisance produced by smoke alone, any satisfactory reason upon which the court of equity can withhold injunctive relief and remit the injured party to his action at law? In Crump *v.* Lambert (L. R. 3 Eq. 409), Romilly, M. R., said: 'The law on this subject is the same, whether it be enforced by action at law or by bill in equity. In any case where a plaintiff could obtain substantial damages at law, he is entitled to an injunction to restrain the nuisance in this court. There is, I apprehend, no distinction between any of the cases, whether it be smoke, smell, noise, vapor or water, or any other gas or fluid. And in that case an injunction was granted.' The doctrine of this case has been adopted by the English courts, and generally by the courts of this country.

"In Wood on Nuisances, section 502, the author, after reviewing many cases English and American, says: 'Thus it will be seen that, even in the ordinary uses of buildings, the owners and occupants are bound not only to see to it that their chimneys are so arranged as to carry off the smoke developed therein, but are also bound to use such fuel as will produce the least obnoxious smoke.' * * * It has been said that the final settlement of property rights does not lie in the broad discretion of the chancellor, but in the clear legal and equitable rules which bind the chancellor himself. The case of Somerset Water, Light & Traction Co. *v.* Hyde (129 Ky. 402), where an injunction to restrain the defendant from discharging sewerage upon the plaintiff's land was denied, and the case of City of Wheeling *v.* Natural Gas Co. (74 W. Va. 372), where the city was refused an injunction to restrain the defendant from supplying gas in violation of its franchise, because of the inconvenience it would cause to the public, forcefully illustrate what we believe to be a misconception of the extent of equitable power. The following cases, among others, support what we believe to be the true rule: Bristol *v.* Palmer (83 Vt. 54), Smith *v.* Rochester (38 Hun, N. Y. 612), 5 Pomeroy's Equity Jurisprudence (530, 531).

"The case in hand is purely one for injunctive relief against a nuisance. Equity is asked to do no more than to restrain the defendant from using soft coal, that is 'such as throws out a black dense smoke,' and the evidence in the record is such as to authorize a finding by the jury that the use of coke was at once convenient and practical. Injunctive relief can not be denied the plaintiff, although the nuisance results from smoke alone."

Landlord and Tenant—Vermin as Constituting Constructive Eviction.—In Hopkins *v.* Murphy, 124 N. E. 252, the Supreme Judicial